IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.84 OF 2002

In

NOTICE NO.1163 OF 2001

In

EXECUTION APPLICATION NO.228 OF 2001

In

ARBITRATION PETITION NO.25 OF 2000

In

AWARD NO.37 OF 1997

M/s.Islamic Investment Company : Petitioners

V/s.

Union of India & Anr. : Respondents

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Mr.P.V.Shah for the petitioners.

Mr.A.D.Kango for the respondents.

Mr.Kazi, Officer of Sheriff (present).

...

CORAM : S.A BOBDE, J.

October 19, 2004.

P.C.:

1. The decree-holders i.e. Islamic Investment Company have moved this application for speaking to the minutes of order dated 22.3.2002. In para 13 of the order dated

22.3.2002, this Court has observed as follows:-

> "13. The Petitioners/decree holder is directed to give security in the sum of Rs.2,06,269/- to the satisfaction of the Prothonotary and Senior Master before withdrawing any sum from the Sheriff of Bombay."

2. This Court thereby intended to permit the decree-holders to withdraw the balance of the decretal amount lying with the Sheriff of Mumbai and directed that they shall give security for Rs.2,06,269/- which is the amount of T.D.S., which according to the judgement-debtors ought to have been deducted from the decretal amount. However, some doubt has arisen because the Court has used the phrase "before withdrawing <u>any</u> sum from the Sheriff of Bombay".

3. It may be noted that the entire controversy in the matter pertained to whether the judgement-debtors are bound to deduct any amount towards T.D.S. from the decretal amount. This Court held that T.D.S. cannot be deducted from the decretal amount.

4. Because in para 13 of the order, this Court observed that the decree-holders are directed to give security in the sum of Rs.2,06,269/- before withdrawing any sum from the Sheriff of Mumbai, it appears that the Sheriff's office has prevented the decree-holders from even withdrawing the undisputed amount i.e. the amount, excluding the T.D.S. Having regard to the scope of the controversy involved, I am of view that the order should be clarified so that the decree-holders shall be liable to give security only if they wish to withdraw the amount of T.D.S. i.e. the sum of Rs.2,06,269/-. They shall not be liable to give any security in case they wish to withdraw the rest of the decretal amount i.e. the amount excluding the T.D.S. The Sheriff of Mumbai may allow the decree-holders to withdraw the entire decretal amount, except the amount of T.D.S. i.e. Rs.2,06,269/- and the balance of poundage, in accordance with law. In case the decree-holders wish to withdraw the amount of T.D.S., they shall, as directed above, be entitled to do so only on furnishing security for the said amount.

5. The order dated 22.3.2002 stands clarified accordingly.

Sd/-

(S.A. BOBDE, J.)